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1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

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5 UNITED STATES OF AMERICA) 21CR32
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6 vs.

7 ROBERT C. MORGAN) Rochester, New York
Defendant.) April 12, 2022
) 9:00 a.m.
8 - - - - - X

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PLEA

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11 TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELIZABETH A. WOLFORD
UNITED STATES DISTRICT JUDGE
12

13 TRINI S. ROSS, ESQ.
United States Attorney
14 BY: EVAN GLABERSON, ESQ.
JOSEPH KARASZEWSKI, ESQ.
15 Assistant United States Attorneys
138 Delaware Avenue
16 Buffalo, New York 14202

17 JOEL COHEN, ESQ.
MYLEN DENERSTEIN, ESQ.
18 TIMOTHY SUN, ESQ.
Gibson Dunn, LLP
19 200 Park Avenue
20 New York, New York 10166

21
22
23
24 **COURT REPORTER:** Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com
100 State Street
25 Rochester, New York 14614

1 USA VS. R. MORGAN
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3
4 P R O C E E D I N G
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15:34:47

15:34:47 6 THE COURT: Morning, everybody.

09:11:03 8 THE CLERK: Court calls the matter of the
09:11:04 9 United States versus Robert Morgan, 21CR32.

09:11:16 10 THE COURT: Let's have appearances for the
09:11:18 11 record. On behalf of the government?

09:11:20 12 MR. GLABERSON: Evan Glaberson on behalf of
09:11:21 13 the United States. Good morning.

09:11:22 14 THE COURT: Good morning.

09:11:23 15 On behalf of Mr. Morgan.

09:11:24 16 MR. COHEN: Good morning, your Honor Joel
09:11:27 17 Cohen, Mylen Denerstein and Timothy Sun.

09:11:30 18 THE COURT: Good morning and Robert Morgan
09:11:32 19 IS here as well. I understand, Mr. Mr. Morgan, that
09:11:37 20 pursuant to the terms and conditions of a plea
09:11:39 21 agreement, you intend to plead to a one count Title 18
09:11:42 22 U.S.C. Section 371, conspiracy to commit wire fraud. Is
09:11:49 23 that correct?

09:11:51 24 THE DEFENDANT: Yes, your Honor.

09:11:52 25 THE COURT: Why don't we make sure the

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09:11:54 2 microphone is right there in front of Mr. Morgan? The
09:11:58 3 base of it can move.

09:12:01 4 THE DEFENDANT: Yes.

09:12:01 5 THE COURT: Because I don't want you to have
09:12:03 6 to keep leaning forward every time I ask you a question.
09:12:06 7 I'm going to ask you a number of questions. I know you
09:12:10 8 were here last week for the plea hearings for your
09:12:13 9 co-defendants. As you know, there are a lot of
09:12:15 10 questions that I need to ask you, and I want to make
09:12:17 11 sure that you're able to answer them, and I'm able to
09:12:20 12 hear you and my court reporter is able to take down your
09:12:23 13 testimony. So the very first step is for you to be
09:12:25 14 sworn in. I'll ask you to please raise your right hand
09:12:29 15 and my courtroom deputy will swear you in.

09:12:33 16 (Whereupon, the defendant was administered
09:12:40 17 the oath by the courtroom deputy.)

09:12:40 18 THE COURT: All right. What you just did
09:12:42 19 there, sir, is you took an oath to tell me the truth.
09:12:45 20 Therefore, I'm going to expect you to answer my
09:12:47 21 questions truthfully. If you do not answer my questions
09:12:50 22 truthfully, you could be prosecuted for another crime
09:12:53 23 called perjury. Do you understand that?

09:12:55 24 THE DEFENDANT: Yes, I do.

09:12:57 25 THE COURT: Could you state your full name

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09:12:58 2 for the record?

09:12:59 3 THE DEFENDANT: Robert C. Morgan.

09:13:00 4 THE COURT: And where were you born, Mr.
09:13:02 5 Morgan?

09:13:03 6 THE DEFENDANT: Rochester, New York.

09:13:03 7 THE COURT: How old are you?

09:13:04 8 THE DEFENDANT: Sixty-five.

09:13:06 9 THE COURT: How far did you go in school?

09:13:07 10 THE DEFENDANT: I got a -- I went through
09:13:11 11 high school and three years of college.

09:13:13 12 THE COURT: I take it you can read, write
09:13:16 13 and understand English?

09:13:16 14 THE DEFENDANT: Yes.

09:13:17 15 THE COURT: Are you currently being treated
09:13:20 16 by any medical or mental health professional for any
09:13:23 17 condition that could impact your ability to understand
09:13:26 18 what's happening here today?

09:13:27 19 THE DEFENDANT: No.

09:13:27 20 THE COURT: Are you taking any prescription
09:13:30 21 medication?

09:13:30 22 THE DEFENDANT: Yes, I am.

09:13:31 23 THE COURT: Could you tell me what you're
09:13:33 24 taking?

09:13:33 25 THE DEFENDANT: Yes, I'm taking several

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09:13:36 2 narcotics. One of them is Oxycodone for approximately
09:13:42 3 31 years; and I'm taking Fentanyl. I'm wearing a
09:13:46 4 Fentanyl patch. And those are the two narcotics, and
09:13:49 5 then I take Gabapentin for nerve pain. And I take
09:13:57 6 Metoprolol for a heart issue.

09:13:59 7 THE COURT: Other than the Metoprolol, are
09:14:01 8 all of the other medications for pain management?

09:14:04 9 THE DEFENDANT: Yes.

09:14:04 10 THE COURT: And the pain that you need to
09:14:10 11 manage, is that at all interfering with your ability to
09:14:14 12 understand what's happening here in court?

09:14:16 13 THE DEFENDANT: No.

09:14:16 14 THE COURT: What about the medications that
09:14:18 15 you just described, including the one for the heart
09:14:22 16 condition, as well as the pain management medications,
09:14:24 17 are those at all interfering with your ability to
09:14:27 18 understand what's happening here in court?

09:14:29 19 THE DEFENDANT: No, not at all.

09:14:30 20 THE COURT: Did you take any of these
09:14:35 21 medications this morning?

09:14:36 22 THE DEFENDANT: Yes.

09:14:37 23 THE COURT: All of them or --

09:14:38 24 THE DEFENDANT: Yes, that's correct.

09:14:39 25 THE COURT: And is that normally when you

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09:14:41 2 take the medication?

09:14:42 3 THE DEFENDANT: Yes.

09:14:44 4 THE COURT: Now, are you under the influence
09:14:46 5 of any other drugs or any alcohol?

09:14:50 6 THE DEFENDANT: No.

09:14:50 7 THE COURT: As far as you're concerned, is
09:14:53 8 there any reason that you cannot understand what's
09:14:55 9 happening here in court today?

09:14:57 10 THE DEFENDANT: No, there is no reason.

09:14:58 11 THE COURT: Mr. Cohen, obviously, you've
09:14:59 12 been representing Mr. Morgan for some time now. Are you
09:15:04 13 confident he is able to comprehend what's going on in
09:15:08 14 court today and the terms and conditions of this plea
09:15:11 15 agreement?

09:15:11 16 MR. KARASZEWSKI: Yes, I am.

09:15:12 17 THE COURT: Okay. Thank you. Mr. Morgan,
09:15:13 18 have you had an opportunity to talk to your attorneys
09:15:16 19 about the government's case against you, and by that I
09:15:18 20 mean the proof that the government would have if this
09:15:22 21 case went to trial?

09:15:22 22 THE DEFENDANT: Yes, I did.

09:15:23 23 THE COURT: And have you also talked with
09:15:25 24 your attorneys about what the likely result might be if
09:15:27 25 the case went to trial?

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09:15:28 2 THE DEFENDANT: Yes.

09:15:28 3 THE COURT: Would it be fair to state that,
09:15:30 4 based on your discussions with your attorneys, you
09:15:32 5 believe entering into this plea agreement and pleading
09:15:35 6 guilty to this charge is in your best interest?

09:15:37 7 THE DEFENDANT: Yes, it is.

09:15:38 8 THE COURT: Now, have you gone over this
09:15:40 9 written plea agreement with your attorneys?

09:15:42 10 THE DEFENDANT: Yes.

09:15:42 11 THE COURT: To the extent that you had any
09:15:44 12 questions, were they able to answer them to your
09:15:46 13 satisfaction?

09:15:47 14 THE DEFENDANT: Yes.

09:15:48 15 THE COURT: Have you read the agreement
09:15:50 16 yourself?

09:15:50 17 THE DEFENDANT: Yes, I have.

09:15:51 18 THE COURT: And have you had enough time to
09:15:54 19 talk to your attorneys about this before coming in here
09:15:57 20 today?

09:15:57 21 THE DEFENDANT: Yes, I have.

09:15:58 22 THE COURT: Are you satisfied with their
09:16:00 23 advice and representation?

09:16:02 24 THE DEFENDANT: Yes.

09:16:03 25 THE COURT: What I'd like to do, Mr. Morgan,

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09:16:05 2 is go through some of the terms of the plea agreement
09:16:07 3 with you. I'm not going to go through everything
09:16:10 4 because you've told me that you've read it and you've
09:16:12 5 gone over it with your attorneys. But, if you have a
09:16:15 6 question about anything, whether I bring it up or not, I
09:16:17 7 want you to stop me and ask your question. Okay?

09:16:19 8 THE DEFENDANT: Okay, thank you.

09:16:20 9 THE COURT: So what I would like to do is
09:16:22 10 direct your attention to the first paragraph of the plea
09:16:24 11 agreement. Because, in there, among other things, it
09:16:27 12 talks about the potential penalties that can be imposed
09:16:30 13 for the crime that you're pleading guilty to. The
09:16:33 14 potential maximum prison sentence is five years. The
09:16:37 15 maximum fine is \$250,000. There is a \$100 mandatory
09:16:43 16 special assessment. And then the supervised release
09:16:45 17 term can be up to three years. Do you understand that
09:16:48 18 those are the potential penalties?

09:16:50 19 THE DEFENDANT: Yes, your Honor.

09:16:51 20 THE COURT: Now, if you were to be placed on
09:16:55 21 supervised release, and I appreciate that there is an
09:16:58 22 agreement in here that no supervised release can be
09:17:01 23 imposed, and we'll talk about that in a moment, but if
09:17:04 24 you were to be placed on supervised release and you
09:17:07 25 violated the terms and conditions of that supervised

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09:17:11 2 release, then, as set forth in paragraph two, you could
09:17:14 3 go to prison for up to two years without getting any
09:17:17 4 credit for the time that you've already served on
09:17:19 5 supervised release. Do you understand that?

09:17:21 6 THE DEFENDANT: Yes, I do.

09:17:22 7 THE COURT: All right. Why don't you, if
09:17:25 8 you would, turn to paragraph five of the plea agreement?

09:17:37 9 THE DEFENDANT: Yes, okay.

09:17:38 10 THE COURT: Do you see the reference at the
09:17:39 11 end of paragraph five to the "Sentencing Reform Act of
09:17:42 12 1984"?

09:17:43 13 THE DEFENDANT: Yes, I do.

09:17:44 14 THE COURT: That is the federal law that I
09:17:45 15 have to follow when I sentence you. And that federal
09:17:48 16 law requires me to consider a number of factors before I
09:17:51 17 impose a sentence. I have to consider your background,
09:17:53 18 the nature and circumstances of the crime that you pled
09:17:56 19 guilty to. But the very first step that I have to go
09:18:00 20 through is I have to figure out what the Sentencing
09:18:03 21 Guidelines would recommend for a sentence. Have you
09:18:05 22 talked to your attorneys about the Sentencing
09:18:07 23 Guidelines?

09:18:07 24 THE DEFENDANT: Yes, your Honor.

09:18:08 25 THE COURT: The Sentencing Guidelines are

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09:18:11 2 advisory, they are not mandatory, but they require me to
09:18:14 3 determine two numbers: One is called your offense
09:18:17 4 level; and one is called your criminal history category.
09:18:20 5 And then those two numbers recommend to me a range for a
09:18:22 6 sentence. Do you understand that?

09:18:23 7 THE DEFENDANT: Yes, I do.

09:18:25 8 THE COURT: Now, before you're sentenced in
09:18:27 9 this case, you're going to be interviewed by the
09:18:29 10 Probation Department. And they are going to prepare a
09:18:31 11 document called a Presentence Investigation Report that
09:18:35 12 will provide me a lot of information, including about
09:18:37 13 your background, the nature and circumstances of the
09:18:40 14 crime that you pled guilty to. But it also will contain
09:18:43 15 the Probation Department's calculations as to what the
09:18:46 16 correct offense level and criminal history category are
09:18:50 17 under the Sentencing Guidelines. Do you understand
09:18:51 18 that?

09:18:51 19 THE DEFENDANT: Yes, your Honor.

09:18:53 20 THE COURT: It's then my job, as the
09:18:55 21 sentencing judge, to carefully review that document as
09:18:58 22 well as all other materials that I receive in connection
09:19:00 23 with sentencing, and then sentence you to what I believe
09:19:03 24 is just, fair, appropriate and reasonable under the law.
09:19:07 25 Do you understand that?

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09:19:08 2 THE DEFENDANT: Yes, I do, your Honor.

09:19:10 3 THE COURT: Now, you and the government have
09:19:12 4 entered into an agreement, at least in part, on what you
09:19:14 5 believe the correct calculations are under the
09:19:16 6 Sentencing Guidelines. So, in paragraph six, you and
09:19:20 7 the government agree that there is a base offense level,
09:19:22 8 that should be apply here of 6. Do you understand that?

09:19:25 9 THE DEFENDANT: Yes.

09:19:27 10 THE COURT: Now, in paragraph 7, the
09:19:29 11 government is setting forth what it believes are various
09:19:32 12 increases that should occur with the offense level.
09:19:36 13 Specifically, the government is contending that the loss
09:19:40 14 amount, total loss, including relevant conduct, was in
09:19:44 15 excess of 9.5 million dollars, and, therefore, there
09:19:48 16 should be a 20-level offense increase, or 20 -- your
09:19:55 17 offense level should increase by 20. And then the
09:19:59 18 government is also contending that the offense involved
09:20:01 19 more than 10 victims, and, therefore, the offense level
09:20:04 20 should go up by 2; that is, the offense involved what
09:20:08 21 are called sophisticated means, and, therefore, the
09:20:11 22 offense level should up by two. And that you derived
09:20:17 23 more than 1 million dollars in gross receipts from one
09:20:20 24 or more financial institutions and that the offense
09:20:23 25 level should go up by two. But you're not agreeing to

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09:20:30 2 those calculations in this plea agreement. You're
09:20:32 3 reserving your right that some or all of those increases
09:20:35 4 do not apply. Do you understand that?

09:20:36 5 THE DEFENDANT: Yes.

09:20:37 6 THE COURT: And then in paragraph 8, the
09:20:40 7 government is indicating it's position that the offense
09:20:42 8 level should go up by four because you were an organizer
09:20:46 9 or leader of criminal activity that involved five or
09:20:49 10 more participants or was otherwise extensive, but,
09:20:53 11 again, you're reserving your right to argue to me at the
09:20:57 12 time of sentencing that that increase does not apply.
09:21:00 13 Do you understand that?

09:21:01 14 THE DEFENDANT: Yes.

09:21:02 15 THE COURT: So in paragraph nine, it
09:21:04 16 indicates what the offense level would be or the
09:21:07 17 adjusted offense level would be. If the government's
09:21:11 18 position is correct, it would be 36. But, you maintain
09:21:15 19 that the adjusted offense level is a 6, the base offense
09:21:19 20 level that we start out with. Do you understand that?

09:21:22 21 THE DEFENDANT: Yes, I do.

09:21:23 22 THE COURT: And then in paragraph 10, it
09:21:25 23 talks about a reduction in the offense level for
09:21:29 24 acceptance of responsibility. I'll need to determine at
09:21:32 25 the time of sentencing whether or not you should receive

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09:21:35 2 the reduction for acceptance for responsibility. You
09:21:41 3 don't automatically get it just by pleading guilty. If,
09:21:44 4 in fact, you are entitled to a reduction for
09:21:48 5 responsibility, you and the government are both agreeing
09:21:50 6 that you should get that reduction. It depends on what
09:21:53 7 the offense level is, though, in terms of how much of a
09:21:57 8 reduction you would get. If your offense level is only
09:22:02 9 a six, then the -- you would only get a two-level
09:22:12 10 decrease. But if the offense level is what the
09:22:15 11 government contends 36, or the adjusted offense level,
09:22:19 12 you would get a three-level decrease. Do you understand
09:22:21 13 that?

09:22:21 14 THE DEFENDANT: Yes, I do.

09:22:22 15 THE COURT: Now, you both you and the
09:22:26 16 government agree in paragraph 11, that the other number
09:22:30 17 that I have to calculate the criminal history category
09:22:32 18 that that is a category I. That is the lowest level
09:22:35 19 that you can have. Do you understand that?

09:22:37 20 THE DEFENDANT: Yes.

09:22:38 21 THE COURT: So, if you look at paragraph 12
09:22:41 22 A, this sets forth what the Sentencing Guidelines would
09:22:45 23 recommend for a sentence if the government's
09:22:48 24 calculations are correct. With a total offense level of
09:22:52 25 33, a criminal history category of I, and taking into

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09:22:56 2 account the statutory maximum penalty, the Sentencing
09:23:01 3 Guidelines would recommend a prison sentence of 60
09:23:04 4 months or five years, a fine of \$30,000 up to \$250,000,
09:23:09 5 and a supervised release term of one to three years. Do
09:23:12 6 you understand that?

09:23:12 7 THE DEFENDANT: Yes, I do.

09:23:17 8 THE COURT: Now, if your numbers are
09:23:18 9 correct, and this is in 12 B, with an offense level of
09:23:22 10 4, and criminal history category of I, the Sentencing
09:23:25 11 Guidelines would recommend a prison sentence of zero to
09:23:27 12 six months, a fine of \$500 up to \$9,500, and a
09:23:33 13 supervised release term of one year. Do you understand
09:23:34 14 that?

09:23:35 15 THE DEFENDANT: Yes, I do.

09:23:37 16 THE COURT: Now, I want to direct your
09:23:38 17 attention to paragraph 13. Because in this paragraph,
09:23:43 18 you and the government are asking me, at the time of
09:23:45 19 sentencing, to not impose a sentence of incarceration or
09:23:49 20 supervised release. And, first of all, do you
09:23:53 21 understand that?

09:23:53 22 THE DEFENDANT: Yes.

09:23:54 23 THE COURT: Now, I'm not going to decide
09:23:57 24 right now whether or not I'll go along with this, I need
09:24:01 25 to look at, among other things, the Presentence

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09:24:04 2 Investigation Report. But the way it works is if at the
09:24:07 3 time of sentencing, I tell you, no, I won't go along
09:24:10 4 with this, and tell the government that, then at that
09:24:14 5 point, you would have the opportunity to withdraw your
09:24:17 6 plea. Do you understand that?

09:24:18 7 THE DEFENDANT: Yes, I do.

09:24:19 8 THE COURT: But if I do accept this, if I
09:24:22 9 tell you at the time of sentencing, I will not impose an
09:24:27 10 incarceration sentence or a supervised release sentence,
09:24:30 11 then you can't withdraw your guilty plea. Do you
09:24:32 12 understand that?

09:24:32 13 THE DEFENDANT: Yes.

09:24:34 14 THE COURT: Let me just ask the attorneys --
09:24:39 15 well, let me first read the last sentence of paragraph
09:24:43 16 13. It says, "This agreement does not affect the amount
09:24:46 17 of a fine, the amount of restitution, or the length and
09:24:50 18 conditions of a term of probation that may be imposed by
09:24:52 19 the Court at sentencing." So, I want to make sure the
09:24:57 20 record is clear, in terms of probation, I can impose up
09:25:03 21 to five years of probation for the violation. Does
09:25:09 22 everybody agree with that?

09:25:10 23 MR. GLABERSON: That's correct.

09:25:11 24 MR. COHEN: Yes, your Honor.

09:25:12 25 THE COURT: And depending on what the

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09:25:14 2 offense level is, would impact what the Guidelines would
09:25:17 3 recommend. If Mr. Morgan's numbers that are in here are
09:25:20 4 correct, then I think the Sentencing Guidelines would
09:25:23 5 recommend no more than three years of probation. But if
09:25:29 6 the government's calculations are correct, the
09:25:32 7 Sentencing Guidelines would recommend at least one year
09:25:34 8 and no more than five years of probation. Does
09:25:38 9 everybody agree with that?

09:25:39 10 MR. GLABERSON: Yes.

09:25:40 11 MR. KARASZEWSKI: Yes.

09:25:44 12 THE COURT: But, so I can impose a
09:25:47 13 probationary sentence, and that would be consistent with
09:25:50 14 the 11(c)(1)(C) agreement. But, as I understand it, Mr.
09:25:56 15 Morgan would be reserving his right to appeal that
09:25:58 16 sentence. Is that a fair statement?

09:26:06 17 MR. KARASZEWSKI: Yes.

09:26:06 18 THE COURT: I want to hear what the
09:26:08 19 attorneys have to say. Mr. Glaberson is looking at the
09:26:12 20 gallery.

09:26:13 21 MR. GLABERSON: I believe the appellate
09:26:15 22 waiver would cover a probationary sentence and that it
09:26:19 23 would be within or less than what the Guidelines
09:26:21 24 recommend, which would be a term of incarceration.

09:26:26 25 THE COURT: Mr. Cohen, what is your position

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09:26:28 2 on that?

09:26:29 3 MR. COHEN: Looking at the waiver, the
09:26:30 4 appeal waiver language as well, your Honor, before I
09:26:34 5 answer.

09:26:43 6 THE COURT: And let me say, I'm reading
09:26:44 7 this, obviously, Mr. Cohen can advocate for his client
09:26:48 8 on his own, I mean, the appellate waiver says that it
09:26:51 9 applies to a sentence imposed by the Court which falls
09:26:54 10 within or is less than the sentencing range for
09:26:56 11 imprisonment, a fine, and supervised release set forth
09:26:59 12 in paragraph 12 A. So it doesn't address probation. If
09:27:07 13 you want to talk to Mr. Karaszewski, Mr. Glaberson, feel
09:27:10 14 free, as opposed to mouthing.

09:27:14 15 MR. COHEN: That's the way I read it as
09:27:17 16 well, your Honor.

09:27:42 17 MR. GLABERSON: Judge, the government's
09:27:44 18 position is, when it says "falls within or is less than
09:27:47 19 the sentencing range of imprisonment, fine or supervised
09:27:52 20 release set forth above," a sentence of probation would
09:27:54 21 be within or less than either the imprisonment or
09:27:58 22 supervised release terms, that it's a, essentially, a
09:28:04 23 lesser sentence than a term of imprisonment is a
09:28:06 24 sentence of probation.

09:28:10 25 THE COURT: What is the defense position on

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09:28:13 2 that? I mean, I think we need to have some
09:28:17 3 understanding as to what the appellate waiver is before
09:28:22 4 Mr. Morgan goes forward with any plea.

09:28:25 5 MR. COHEN: Your Honor, I think probation is
09:28:27 6 different from -- it is, we all know, from supervised
09:28:30 7 release, I read the terms of the agreement, it does
09:28:33 8 allow the appeal rights that your Honor had earlier
09:28:37 9 enumerated, depending on the sentence of probation,
09:28:40 10 which differs from supervised release. So I think that
09:28:43 11 is the way the agreement reads. As your Honor had
09:28:48 12 earlier, I think, as your Honor had interpreted it.

09:28:59 13 THE COURT: I mean, I'm not sure why the
09:29:03 14 government believes that a sentence of time served with,
09:29:07 15 let's say, one year of supervised release to follow
09:29:10 16 would be a lesser sentence than a sentence of five years
09:29:14 17 probation. Whereas, you know, if you violate probation,
09:29:18 18 you're then looking at the potential maximum penalties
09:29:22 19 that you were originally facing as originally charged as
09:29:27 20 opposed to lesser penalties for a violation of
09:29:30 21 supervised release.

09:29:58 22 MR. GLABERSON: I guess, to the extent it
09:30:00 23 would come up, were any appeal sought, the government's
09:30:04 24 position would be that by waiving his right to appeal a
09:30:07 25 six-month prison sentence, that necessarily implies that

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09:30:11 2 he would also waive a lesser sentence, a sentence of
09:30:16 3 probation.

09:30:16 4 THE COURT: But the defense disagrees with
09:30:18 5 that, and before we go forward with a plea and I ask Mr.
09:30:22 6 Morgan questions about him knowingly waiving certain
09:30:27 7 rights to appeal, I want to make sure everybody is on
09:30:29 8 the same page. And it doesn't sound as though that is
09:30:32 9 the case right now. So maybe we could take a break and
09:30:37 10 counsel could discuss this and see if you can come to an
09:30:42 11 agreement.

09:30:43 12 MR. GLABERSON: Yes.

09:30:44 13 THE COURT: Okay. All right.

09:31:01 14 (Whereupon, there was a break in the
09:31:01 15 proceeding.)

10:18:07 16 THE COURT: All right. We are back on the
10:18:08 17 record with Mr. Glaberson, Mr. Karaszewski, Mr. Cohen,
10:18:12 18 Mr. Sun, Ms. Denerstein, Mr. Morgan. We took a break
10:18:17 19 when I had raised a question about the scope of the
10:18:20 20 appellate waiver. So, has there been any resolution?

10:18:25 21 MR. KARASZEWSKI: Judge, if you permit me to
10:18:27 22 speak.

10:18:27 23 THE COURT: Yes, I'll permit you to speak,
10:18:29 24 Mr. Karaszewski.

10:18:30 25 MS. KARASZEWSKI: Thank you, your Honor.

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10:18:31 2 So, maybe we can resolve it this way. We've had -- I've
10:18:36 3 discussed with defense counsel and Mr. Glaberson, and I
10:18:41 4 have discussed with the defense counsel, that the
10:18:44 5 government -- the government reads the appellate waiver,
10:18:48 6 paragraph 30, of the plea agreement, that a sentence of
10:18:52 7 probation would be any component of a sentence which
10:18:58 8 falls within or is less than the sentencing range for
10:19:03 9 imprisonment set forth in paragraph 12 A, which is, that
10:19:07 10 sentencing range for imprisonment is 60 months. So,
10:19:11 11 it's a sentence of probation, by any measure, is a
10:19:18 12 sentence that is less than 60 months imprisonment.
10:19:25 13 Understanding, Judge, that the appellate -- neither the
10:19:30 14 appellate waiver nor paragraph 12 A, says anything about
10:19:34 15 probation. And I'm -- my understanding is of defense
10:19:40 16 counsel, they can obviously speak for themselves, is
10:19:44 17 that it doesn't say anything about probation, so that if
10:19:47 18 your Honor imposes a sentence of probation, they would
10:19:49 19 be able to file a Notice of Appeal and argue an appeal
10:19:53 20 consistent with the appellate waiver.

10:19:56 21 Now, that, obviously, would be a matter for
10:20:00 22 the Second Circuit to determine whether or not Mr.
10:20:06 23 Morgan has waived his right to appeal a sentence of
10:20:09 24 probation. I would propose, Judge, that we can proceed
10:20:14 25 today with the understanding that if Mr. Morgan were to

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10:20:23 2 appeal a sentence of probation, that we would retain our
10:20:29 3 right to attempt to enforce the waiver. I think that is
10:20:34 4 sufficiently -- it sufficiently advises Mr. Morgan of
10:20:41 5 his rights with regard to that, that that is the
10:20:49 6 government's position, that if we were to leave it at
10:20:51 7 that, that that would not affect the knowing and
10:20:54 8 voluntary entering of the plea here.

10:20:57 9 THE COURT: The only, I guess, well, not the
10:21:00 10 only, but an issue with that, and I'll let Mr. Cohen
10:21:04 11 advise us as to the defense position, the issue I see
10:21:08 12 with that is that typically when I take a plea, and I
10:21:11 13 address the appellate waiver, I very clearly go through
10:21:15 14 with the defendant what he is waiving. And, here, I
10:21:20 15 would not be having Mr. Morgan, on the record, concede
10:21:24 16 that he is waiving the right to appeal a probationary
10:21:28 17 sentence. So, I don't know how it realistically can be
10:21:35 18 argued that he waives a probationary sentence if I don't
10:21:40 19 have the colloquy with him about that.

10:21:45 20 MS. KARASZEWSKI: I understand that, Judge.
10:21:47 21 I will say that this has never come up before.

10:21:51 22 THE COURT: Well, it came up last week to
10:21:53 23 some degree.

10:21:54 24 MS. KARASZEWSKI: I understand that, Judge.
10:21:55 25 THE COURT: The difference last week is that

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10:21:58 2 there wasn't this language of the 11(c)(1)(C) with no
10:22:01 3 supervised release. So, I think --

10:22:04 4 MS. KARASZEWSKI: I'm sorry, Judge.

10:22:05 5 THE COURT: I think everybody agreed last
10:22:08 6 week, but it was a little up in the air, but I think
10:22:13 7 that, my recollection is, there was a general consensus
10:22:18 8 that a probationary term that fit within the time frame
10:22:22 9 of the supervised release term that was set forth in the
10:22:27 10 plea agreements last week would be consistent with the
10:22:31 11 terms of the plea agreement. But the difference was
10:22:33 12 that there wasn't an 11(c)(1)(C) agreement for no
10:22:37 13 supervised release. I think that is what complicates
10:22:43 14 this.

10:22:43 15 MS. KARASZEWSKI: I understand that, Judge.
10:22:44 16 And let me amend what I said. This hasn't come up in
10:22:48 17 any other case that I've ever handled. I mean, just
10:22:52 18 because, I think, the position has always been, and the
10:22:55 19 understanding has always been, that a sentence of
10:22:57 20 probation is a component of a sentence that is less than
10:23:01 21 a term of imprisonment. I don't think that is an
10:23:06 22 illogical way of looking at it. I guess what -- you're
10:23:15 23 right, Judge, that we don't have a term of -- the
10:23:23 24 (c)(1)(C) allows Mr. Morgan to withdraw his plea if the
10:23:29 25 Court were to determine that he should be sentenced to a

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10:23:31 2 term of probation and a term of supervised release.

10:23:33 3 THE COURT: Not probation.

10:23:34 4 MS. KARASZEWSKI: I'm sorry, a term of
10:23:36 5 imprisonment and supervised release. Thank you, Judge.

10:23:41 6 But, so you don't have kind of that overlay of the
10:23:45 7 supervised release to kind of determine what the waiver
10:23:47 8 is.

10:23:48 9 THE COURT: Right. I think, if, at the time
10:23:50 10 of sentencing, I say I'm going to accept the plea
10:23:52 11 agreement and impose -- let me rephrase it. If at the
10:23:55 12 time of sentencing I say, I'm going to impose a
10:23:58 13 time-served sentence and two years supervised release, I
10:24:02 14 can't do that under the 11(c)(1)(C). I wouldn't be
10:24:05 15 accepting the plea agreement. Mr. Morgan would have the
10:24:10 16 right to withdraw his plea. But if I say, at the time
10:24:14 17 of sentencing, I'm going to impose a two-year
10:24:19 18 probationary sentence, that is consistent with the
10:24:21 19 11(c)(1)(C), I guess, I'm reading this, my initial read,
10:24:25 20 I understand what you're saying, that probation is less
10:24:27 21 than a five-year prison sentence, obviously, but I think
10:24:32 22 what complicates this is the no supervised release term.
10:24:35 23 So I think there would be an argument, at least, that
10:24:39 24 Mr. Morgan could appeal a two-year probationary
10:24:42 25 sentence.

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10:24:42 2 I guess, Mr. Cohen or Ms. Denerstein, what
10:24:48 3 is the defense position on this?

10:24:51 4 MS. DENERSTEIN: We agree with the Court.
10:24:52 5 That should your Honor impose a sentence of probation,
10:24:55 6 that Mr. Morgan would not have waived his right to
10:24:59 7 appeal. We are prepared to permit the government to
10:25:02 8 argue that what we would suggest a strained reading of
10:25:09 9 paragraph 30 provide such a waiver, and we would oppose,
10:25:14 10 but if you were to ask Mr. Morgan if he were waiving his
10:25:18 11 right to a term of probation, he would answer no. So,
10:25:21 12 we're willing to proceed with that understanding.

10:25:23 13 MS. KARASZEWSKI: And that would be a
10:25:24 14 matter, if it came to that, Judge, we would argue that
10:25:27 15 before the Second Circuit and we would have them decide.

10:25:30 16 THE COURT: Right. But, just so there is
10:25:32 17 the understanding, I'm not going to be -- I'll ask Mr.
10:25:35 18 Morgan the questions, but I'm anticipating the answers
10:25:38 19 are going to be that he is not willing to waive a
10:25:42 20 probationary sentence.

10:25:44 21 MS. KARASZEWSKI: Yes. And if that is the
10:25:46 22 end result of today's proceeding, certainly if this ever
10:25:49 23 gets to the Second Circuit, the record will be made of
10:25:53 24 his understanding of the waiver, and we would proceed
10:25:56 25 accordingly, Judge.

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10:25:57 2 THE COURT: Okay. So with that, Ms.

10:25:59 3 Denerstein, defense is ready to proceed?

10:26:03 4 MS. DENERSTEIN: Yes, your Honor, we are.

10:26:03 5 THE COURT: Okay. And, Mr. Glaberson, the

10:26:06 6 government is ready to proceed?

10:26:07 7 MR. GLABERSON: Yes, your Honor.

10:26:07 8 THE COURT: Okay. Mr. Morgan, I'm going to

10:26:10 9 remind you, you are still under oath. And before we got

10:26:14 10 sidetracked, I was talking to you about the 11(c)(1)(C)

10:26:17 11 agreement. So let me make sure the record is clear.

10:26:20 12 You and the government are asking me, at the time of

10:26:23 13 sentencing, to impose a no incarceration and no

10:26:26 14 supervised release sentence. And if I go along with

10:26:30 15 that, you cannot withdraw your guilty plea. Do you

10:26:33 16 understand that?

10:26:33 17 THE DEFENDANT: Yes.

10:26:34 18 THE COURT: In addition, you're agreeing

10:26:36 19 that that 11(c)(1)(C) agreement does not affect the

10:26:41 20 amount of a fine, the amount of restitution, or the

10:26:45 21 length and conditions of a term of probation that may be

10:26:48 22 imposed by the Court. In other words, I can impose a

10:26:52 23 fine up to the maximum amount allowed under the law,

10:26:56 24 which is \$250,000, I can impose restitution, and I can

10:27:02 25 impose a probationary sentence, and that would not allow

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10:27:06 2 you to withdraw from the guilty plea. Do you understand
10:27:09 3 that?

10:27:09 4 THE DEFENDANT: Yes, I do.

10:27:11 5 THE COURT: But let me talk to you about the
10:27:14 6 appellate waiver. And this is in paragraph 30 of the
10:27:26 7 plea agreement. You tell me when you have it there in
10:27:34 8 front of you.

10:27:36 9 THE DEFENDANT: Yes, I'm here. Thank you.

10:27:37 10 THE COURT: So, paragraph 30 states that
10:27:39 11 you're agreeing to waive your right to appeal or
10:27:42 12 collaterally attack any component of a sentence imposed
10:27:46 13 by the Court which falls within or is less than the
10:27:49 14 sentencing range for imprisonment, a fine, and
10:27:52 15 supervised release set forth in paragraph 12 A. Do you
10:27:55 16 understand that?

10:27:55 17 THE DEFENDANT: Yes, I do, your Honor.

10:27:57 18 THE COURT: And you've talked to your
10:27:58 19 attorneys about that?

10:28:00 20 THE DEFENDANT: Yes.

10:28:00 21 THE COURT: And you've heard the discussions
10:28:02 22 that have gone on in court today about this appellate
10:28:06 23 waiver?

10:28:06 24 THE DEFENDANT: Yes.

10:28:07 25 THE COURT: Now, you understand that if you

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10:28:09 2 were to go to trial and you were convicted by a jury and
10:28:12 3 then I sentenced you, you would have the right to appeal
10:28:15 4 that conviction and any sentence that is imposed to the
10:28:18 5 court above me. It's called the Second Circuit Court of
10:28:22 6 Appeals. Do you understand that?

10:28:22 7 THE DEFENDANT: Yes, I do.

10:28:23 8 THE COURT: You also would have some limited
10:28:25 9 rights to what they call "collaterally attack" that
10:28:28 10 conviction and any sentence that is imposed by bringing
10:28:30 11 a proceeding before the Court where you were convicted,
10:28:33 12 such as a habeas corpus proceeding. Do you understand
10:28:36 13 that?

10:28:36 14 THE DEFENDANT: Yes.

10:28:37 15 THE COURT: But you're agreeing, pursuant to
10:28:39 16 the terms and conditions of this plea agreement, that if
10:28:42 17 I sentence you within or less than a prison sentence of
10:28:46 18 five years, a fine of \$30,000 up to \$250,000, and a
10:28:54 19 supervised release term of one to three years, you're
10:28:57 20 waiving any right to appeal or collaterally attack that
10:28:59 21 sentence. Do you understand that?

10:29:00 22 THE DEFENDANT: Yes, your Honor.

10:29:02 23 THE COURT: Now, there is a disagreement
10:29:04 24 between you and the government as to whether or not that
10:29:06 25 appellate waiver applies to a probationary sentence that

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10:29:10 2 is imposed. And it's my understanding that you're not
10:29:13 3 waiving the right to appeal a probationary sentence. Is
10:29:18 4 that correct?

10:29:18 5 THE DEFENDANT: That's correct.

10:29:19 6 THE COURT: Do you have any questions for me
10:29:20 7 or your attorneys about anything that we've covered up
10:29:23 8 to this point?

10:29:24 9 THE DEFENDANT: No, I don't.

10:29:25 10 THE COURT: All right. Let me talk to you
10:29:28 11 about paragraph 18 of the plea agreement.

10:29:41 12 THE DEFENDANT: Okay.

10:29:42 13 THE COURT: So you're agreeing, based on the
10:29:44 14 government's agreement to dismiss the charges in the
10:29:51 15 pending indictment in this case, that you're going to
10:29:57 16 waive any statute of limitations defense to the charge
10:30:00 17 that is in the Superseding Information. In other words,
10:30:03 18 you're not objecting to, on timeliness grounds, to the
10:30:08 19 Superseding Information being filed. Do you understand
10:30:09 20 that?

10:30:09 21 THE DEFENDANT: Yes, I do.

10:30:11 22 THE COURT: And then let me talk to you
10:30:13 23 about in paragraph 21 of the plea agreement. You're
10:30:22 24 acknowledging that you're aware of investigations,
10:30:29 25 criminal investigations, by the U.S. Department of

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10:30:36 2 Justice Criminal Division, Fraud Section, and it's your
10:30:38 3 understanding, as well as the government's, that upon
10:30:41 4 your entry of a guilty plea, the fraud section will
10:30:45 5 further decline to investigate or prosecute you in
10:30:48 6 connection with those investigations. Do you understand
10:30:50 7 that?

10:30:50 8 THE DEFENDANT: Yes, I do.

10:30:51 9 THE COURT: Let me talk to you about the
10:30:54 10 restitution provisions. In paragraph 23, you're
10:30:59 11 acknowledging that I may require restitution as part of
10:31:03 12 any sentence that is imposed in this case, and that you
10:31:06 13 cannot withdraw your guilty plea because of that. But
10:31:11 14 you're also, and the government is also, acknowledging
10:31:14 15 that the loan to ESL Federal Credit Union referenced in
10:31:26 16 the factual basis of the plea agreement, which we'll get
10:31:30 17 to in a minute, has been repaid in full and there is no
10:31:34 18 restitution due. Do you understand that?

10:31:35 19 THE DEFENDANT: Yes, I do.

10:31:36 20 THE COURT: And now any monetary -- let me
10:31:39 21 talk to you about paragraph 25. Any monetary penalties
10:31:42 22 that are imposed at the time of sentencing, you're
10:31:47 23 acknowledging that those are due and payable in full
10:31:51 24 immediately and may be subject to immediate enforcement
10:31:56 25 and subject to an offset in the event that there is any

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10:32:01 2 returned property. Do you understand that?

10:32:03 3 THE DEFENDANT: Yes.

10:32:06 4 THE COURT: And then in paragraph 26, you're
10:32:08 5 agreeing to deposit the maximum potential fine, which is
10:32:14 6 \$250,000, into a third-party escrow account, mutually
10:32:18 7 agreed upon with the government, at least 10 days prior
10:32:21 8 to sentencing, and you're reserving your right to
10:32:23 9 advocate for a fine under the statutory maximum. Do you
10:32:28 10 understand that?

10:32:28 11 THE DEFENDANT: Yes, I do.

10:32:31 12 THE COURT: Let me talk to you about the
10:32:32 13 forfeiture provisions. As you know, there are, or have
10:32:37 14 been, one civil forfeiture case pending right now, there
10:32:41 15 have been several civil forfeiture cases commenced in
10:32:44 16 connection with this matter, and part of this plea
10:32:53 17 agreement involves you and the government agreeing to
10:32:55 18 execute a civil settlement and forfeiture agreement that
10:33:01 19 has been negotiated for those civil forfeiture matters.
10:33:06 20 And the agreement is that if I do not go along with
10:33:11 21 this, if I don't so order this settlement and forfeiture
10:33:14 22 agreement, you're retaining your right to withdraw, as
10:33:18 23 is the government, retaining its right to withdraw, from
10:33:22 24 the plea agreement. Do you understand that?

10:33:23 25 THE DEFENDANT: Yes, I do, your Honor.

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10:33:24 2 THE COURT: And you're also agreeing to
10:33:26 3 execute any other documents reasonably necessary to
10:33:29 4 resolve the civil litigation in accordance with the
10:33:32 5 settlement and forfeiture agreement. Do you understand
10:33:34 6 that?

10:33:34 7 THE DEFENDANT: Yes.

10:33:38 8 THE COURT: Why don't we turn to section 10
10:33:40 9 of the agreement?

10:33:49 10 MR. COHEN: Roman Numeral X, your Honor?

10:33:51 11 THE COURT: Starts with paragraph 33. Do
10:33:59 12 you have that there in front of you?

10:34:01 13 THE DEFENDANT: Yes, I do.

10:34:02 14 THE COURT: So paragraph 33 includes your
10:34:04 15 agreement not to bring a motion for attorney fees and
10:34:08 16 other litigation expenses under the Hyde Amendment on
10:34:11 17 the ground that the position of the United States was
10:34:15 18 vexatious, frivolous or in bad faith with respect to the
10:34:18 19 counts of conviction or any other count or charge that
10:34:22 20 has been dismissed or which may be dismissed in the 2018
10:34:29 21 indictment, the related civil forfeiture actions, or
10:34:32 22 pursuant to this agreement. Do you understand that?

10:34:35 23 THE DEFENDANT: Yes, I do.

10:34:35 24 THE COURT: You're also acknowledging that
10:34:37 25 you are not a "prevailing party" within the meaning of

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10:34:43 2 the Hyde Amendment as to those various matters. Do you
10:34:46 3 understand that?

10:34:46 4 THE DEFENDANT: Yes, I do.

10:34:47 5 THE COURT: And you're waiving your right to
10:34:48 6 seek any attorney fees or other litigations under that
10:34:51 7 statute. Do you understand that?

10:34:52 8 THE DEFENDANT: Yes.

10:34:54 9 THE COURT: And then, in addition, you're
10:34:56 10 agreeing to withdraw the pending motion for
10:34:59 11 reconsideration that was filed in connection with the
10:35:02 12 2018 indictment, and not re-file it or renew it, unless,
10:35:08 13 for some reason, the plea agreement is not accepted or
10:35:16 14 your plea is not accepted pursuant to the various
10:35:19 15 provisions that are in paragraph 34(a). In other words,
10:35:23 16 there are various options by which there is a potential,
10:35:26 17 at least, that the plea agreement would not be accepted
10:35:29 18 or you'd be able to withdraw your guilty plea or
10:35:32 19 withdraw from the plea agreement. In the event that
10:35:35 20 occurs, you would be able to renew your motion for
10:35:41 21 reconsideration. But, if it doesn't occur, that is the
10:35:44 22 end of the story, at least, in terms of your motion for
10:35:48 23 reconsideration. Do you understand that?

10:35:48 24 THE DEFENDANT: Yes, I do.

10:35:57 25 THE COURT: All right. Let me talk to you,

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10:36:00 2 Mr. Morgan, about what it means to waive indictment,
10:36:02 3 because the Superseding Information contains a felony
10:36:05 4 charge that is different than what you're currently
10:36:08 5 charged with. In order for you to be charged with this
10:36:11 6 crime, normally the case would have to be presented to a
10:36:15 7 grand jury and the grand jury could vote to charge you
10:36:17 8 with the crime that you're going to be pleading guilty
10:36:19 9 to or the grand jury could vote to dismiss the charge
10:36:21 10 against you. In order to have -- well, waive
10:36:26 11 presentation of the case to a grand jury, you need to
10:36:30 12 agree to be charged by a Superseding Information as
10:36:33 13 opposed to an indictment. And to do that, you need to
10:36:37 14 waive presentation of the case to a grand jury. Do you
10:36:40 15 understand that?

10:36:40 16 THE DEFENDANT: Yes, I do.

10:36:41 17 THE COURT: And have you talked to your
10:36:43 18 attorneys about that?

10:36:44 19 THE DEFENDANT: Yes.

10:36:44 20 THE COURT: In order to waive indictment,
10:36:46 21 you need to sign the Waiver of Indictment form, but when
10:36:48 22 you do that, you're telling me in writing that you fully
10:36:51 23 understand your right to have the case presented to a
10:36:53 24 grand jury and you're agreeing to be charged by the
10:36:57 25 Superseding Information. Do you understand that?

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10:36:58 2 THE DEFENDANT: Yes.

10:36:58 3 THE COURT: All right. Then I ask you to
10:37:00 4 sign the Waiver of Indictment form now. Thank you. And
10:37:04 5 then once it's signed, you can hand it up along with --
10:37:08 6 I don't think I have the information. Do you have the
10:37:10 7 original information, Mr. Glaberson?

10:37:12 8 MR. GLABERSON: It's on counsel table with
10:37:13 9 the waiver.

10:38:14 10 THE COURT: Okay. All right. The record
10:38:15 11 should reflect, I have the original Waiver of Indictment
10:38:17 12 form as well as two copies signed by Mr. Morgan and Mr.
10:38:21 13 Cohen. I do find, Mr. Morgan, based on your answers to
10:38:25 14 my questions and based on your demeanor here in court
10:38:27 15 today and based on you signing this Waiver of Indictment
10:38:29 16 form, that you are waiving indictment in a knowing,
10:38:32 17 voluntary and intelligent manner. So, I will sign the
10:38:36 18 form and we will arrange for it to be filed in our
10:38:39 19 clerk's office. So, what that means is that you're now
10:38:42 20 accused by way of a Superseding Information signed by
10:38:46 21 Mr. Glaberson on behalf of the United States Attorney
10:38:49 22 with one count of conspiracy to commit wire fraud in
10:38:54 23 violation of Title 18 U.S.C. Section 371.

10:39:00 24 Mr. Cohen, do you have a copy of the
10:39:03 25 Information?

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10:39:03 2 MR. COHEN: I do, your Honor.

10:39:04 3 THE COURT: Do you waive a full reading?

10:39:06 4 MR. COHEN: Yes.

10:39:06 5 THE COURT: Mr. Morgan, I'm going to enter a
10:39:08 6 preliminary plea of not guilty on your behalf because,
10:39:10 7 before I ask you whether or not you want to plead
10:39:13 8 guilty, I still need to go over some other matters with
10:39:16 9 you. I want to talk to you now about the rights that
10:39:19 10 you're going to be giving up by pleading guilty as
10:39:21 11 opposed to going to trial.

10:39:22 12 First of all, do you understand that you do
10:39:24 13 not need to plead guilty to anything. If you wanted to,
10:39:27 14 you could continue with the not guilty pleas that have
10:39:31 15 been entered on your behalf in this case and go to a
10:39:33 16 trial in front of a jury. Do you understand that?

10:39:35 17 THE DEFENDANT: Yes, I do.

10:39:36 18 THE COURT: And, at that trial, as well as
10:39:39 19 at all critical stages of this proceeding, you would
10:39:42 20 have the right to representation by counsel. If you
10:39:45 21 could no longer afford an attorney, you would have the
10:39:48 22 right to have an attorney appointed to represent you.
10:39:50 23 Do you understand that?

10:39:51 24 THE DEFENDANT: Yes.

10:39:51 25 THE COURT: It would be up to the government

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10:39:52 2 at the trial to prove its case against you. You would
10:39:56 3 not have the burden to prove anything. In other words,
10:39:59 4 the government would be the only party that would have
10:40:01 5 the obligation to put in proof, present evidence,
10:40:04 6 present proof. Do you understand that?

10:40:08 7 THE DEFENDANT: Yes, I do.

10:40:08 8 THE COURT: Your attorneys, on your behalf,
10:40:10 9 could challenge any of the evidence that the government
10:40:12 10 sought to introduce, and they could confront and cross
10:40:15 11 examine any of the witnesses who testified. Do you
10:40:17 12 understand that?

10:40:17 13 THE DEFENDANT: Yes, I do.

10:40:18 14 THE COURT: You'd have the right, if you
10:40:20 15 wanted to, to testify on your own behalf or you could
10:40:22 16 chose not to do that. Do you understand that?

10:40:26 17 THE DEFENDANT: Yes, I do.

10:40:27 18 THE COURT: You could also put in a defense
10:40:28 19 case. You could call witnesses, compel them to attend
10:40:34 20 the trial, put in evidentiary proof, or you could chose
10:40:36 21 not to do that. Do you understand that?

10:40:37 22 THE DEFENDANT: Yes.

10:40:37 23 THE COURT: And if you chose not to testify
10:40:38 24 or if you chose not to put in any type of a defense
10:40:41 25 case, I would specifically instruct the jury that they

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10:40:44 2 could not in any way consider that as evidence of your
10:40:46 3 guilt or evidence of anything else, for that matter. Do
10:40:49 4 you understand that?

10:40:49 5 THE DEFENDANT: Yes, I do, your Honor.

10:40:52 6 THE COURT: In addition, the jury would have
10:40:54 7 to consider each charge against you separately and find
10:40:58 8 that the government had proven each element of the
10:41:01 9 charge under consideration beyond a reasonable doubt.

10:41:05 10 Do you understand that?

10:41:06 11 THE DEFENDANT: Yes.

10:41:07 12 THE COURT: And if you look at paragraph
10:41:09 13 three of the plea agreement.

10:41:16 14 THE DEFENDANT: I'm sorry.

10:41:17 15 THE COURT: You tell me when you have it
10:41:18 16 there in front of you.

10:41:21 17 THE DEFENDANT: Okay.

10:41:27 18 THE COURT: All right. So paragraph three
10:41:29 19 sets forth the elements that the government would have
10:41:31 20 to prove beyond a reasonable doubt before you could be
10:41:33 21 convicted of the charge that is contained in the
10:41:38 22 Superseding Information. First, that two or more
10:41:41 23 persons entered into an unlawful agreement to commit an
10:41:44 24 offense against the United States as charged in the
10:41:48 25 Superseding Information, to wit, knowingly devising a

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10:41:51 2 scheme to defraud and to obtain money and property by
10:41:54 3 means of false and fraudulent pretenses, representations
10:41:58 4 and promises, and for the purpose of executing the
10:42:01 5 scheme, used or caused to be used, wire communications
10:42:05 6 and interstate commerce. Second, that you were a party
10:42:09 7 to or a member of that agreement. Third, that you
10:42:12 8 joined the agreement or conspiracy knowing of its
10:42:16 9 objective to commit an offense against the United States
10:42:19 10 and intending to join together with at least one other
10:42:22 11 alleged co-conspirator to achieve that objective. That
10:42:29 12 is, you and at least one other alleged co-conspirator,
10:42:32 13 shared a unity of purpose and intent to achieve a common
10:42:38 14 goal or objective to commit an offense against the
10:42:41 15 United States. Fourth, that at some time during the
10:42:46 16 existence of the agreement or conspiracy, at least one
10:42:50 17 of the members of the conspiracy committed at least one
10:42:53 18 overt act in order to further the objective of the
10:42:56 19 agreement. And fifth, that the overt act was committed
10:43:01 20 to further some object of the conspiracy. Do you
10:43:05 21 understand the government would have to prove each one
10:43:07 22 of those elements beyond a reasonable doubt before a
10:43:10 23 jury could convict you of the charge in the Superseding
10:43:13 24 Information?

10:43:16 25 THE DEFENDANT: Yes, I do.

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10:43:17 2 THE COURT: In addition, the jury would have
10:43:19 3 to be unanimous in its verdict. In other words, all 12
10:43:22 4 people would have to be in agreement that the government
10:43:24 5 met its burden of proof. Do you understand that?

10:43:25 6 THE DEFENDANT: Yes, I do, your Honor.

10:43:27 7 THE COURT: Do you understand that you're
10:43:28 8 going to be giving up these rights?

10:43:30 9 THE DEFENDANT: Yes, I do.

10:43:31 10 THE COURT: Do you understand that a plea of
10:43:32 11 guilty is the same as if a jury found you guilty after
10:43:35 12 trial?

10:43:35 13 THE DEFENDANT: Yes.

10:43:37 14 THE COURT: Now, with a felony conviction,
10:43:38 15 you may lose certain civil rights, such as the right to
10:43:42 16 vote, the right to hold certain licenses or offices, the
10:43:45 17 right to sit on a jury. Do you understand that?

10:43:47 18 THE DEFENDANT: Yes.

10:43:48 19 THE COURT: Have any other promises been
10:43:50 20 made to you to get you to plead guilty, other than those
10:43:53 21 that are contained in this plea agreement?

10:43:55 22 THE DEFENDANT: No, your Honor.

10:43:55 23 THE COURT: Has anyone threatened you or
10:43:57 24 coerced you in any way to get you to plead guilty?

10:44:00 25 THE DEFENDANT: No, your Honor.

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10:44:00 2 THE COURT: Are you pleading guilty because,
10:44:03 3 based on your discussions with your attorney, you
10:44:05 4 believe it's in your best interest to do so?

10:44:07 5 THE DEFENDANT: Yes, your Honor.

10:44:07 6 THE COURT: Are you pleading guilty because
10:44:09 7 you are guilty?

10:44:10 8 THE DEFENDANT: Yes.

10:44:11 9 THE COURT: Have you answered my questions
10:44:13 10 truthfully?

10:44:13 11 THE DEFENDANT: Yes, your Honor.

10:44:14 12 THE COURT: Do you have any questions for me
10:44:16 13 or your attorneys?

10:44:16 14 THE DEFENDANT: No.

10:44:17 15 THE COURT: All right. Let me direct you to
10:44:20 16 the last numbered paragraph of the plea agreement,
10:44:28 17 paragraph 35. What I'm going to do, Mr. Morgan, is I'm
10:44:41 18 going to read this paragraph into the record. You can
10:44:43 19 follow along on your copy, but I want you to listen to
10:44:46 20 me, too, because after I read it, I'm going to ask
10:44:49 21 whether or not it's true. It states as follows: "This
10:44:51 22 plea agreement represents the total agreement between
10:44:54 23 the defendant, Robert Morgan, and the government. There
10:44:58 24 are no promises made by anyone, other than those
10:45:00 25 contained in this agreement. This agreement supersedes

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10:45:04 2 any other prior agreements, written or oral, entered
10:45:07 3 into between the government and the defendant."

10:45:10 4 Is that true.

10:45:10 5 THE DEFENDANT: Yes.

10:45:11 6 THE COURT: All right. I'm going to do the

10:45:13 7 same thing with the paragraph on the next page, which

10:45:18 8 states as follows: "I have read this agreement, which

10:45:22 9 consists of pages 1 through 14. I have had a full

10:45:25 10 opportunity to discuss this agreement with my attorneys,

10:45:28 11 Joel M. Cohen Esq., and Mylen L. Denerstein Esq. I

10:45:34 12 agree that it represents the total agreement reached

10:45:36 13 between me and the government. No promises or

10:45:39 14 representations have been made to me, other than what is

10:45:42 15 contained in this agreement. I understand all of the

10:45:46 16 consequences of my plea of guilty. I fully agree with

10:45:49 17 the contents of this agreement. I am signing this

10:45:52 18 agreement voluntarily and of my own free will."

10:45:55 19 Is that true, sir?

10:45:56 20 THE DEFENDANT: Yes.

10:45:56 21 THE COURT: Okay. The next step then is for

10:45:59 22 you to sign the plea agreement. But understand, when

10:46:01 23 you sign this, you're telling me in writing that you

10:46:03 24 fully understand all of the terms and conditions and

10:46:05 25 you're entering into it in a knowing, voluntary and

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10:46:09 2 intelligent manner." Is that true?

10:46:10 3 THE DEFENDANT: Yes.

10:46:11 4 THE COURT: Then I ask you to sign the plea
10:46:13 5 agreement now. Once it's fully executed, if you could
10:46:21 6 hand it up, Mr. Cohen.

10:46:22 7 MR. COHEN: Will do.

10:46:23 8 THE COURT: Thank you. All right. The
10:46:52 9 record should reflect that I have in front of me the
10:46:54 10 original plea agreement. It has been signed by Mr.
10:46:57 11 Glaberson on behalf of the U.S. attorney, and it's been
10:47:00 12 signed by Mr. Morgan and witnessed by Mr. Cohen and Ms.
10:47:04 13 Denerstein. I am satisfied, Mr. Morgan, based on your
10:47:08 14 answers to my questions and based on your demeanor here
10:47:10 15 in court today, and based on you signing this plea
10:47:13 16 agreement, that you are entering into this plea in a
10:47:15 17 knowing, voluntary and intelligent manner.

10:47:19 18 Now, before I can accept your plea, though,
10:47:21 19 you're going to have to tell me what you did. So, why
10:47:24 20 don't you, if you would -- do you have another copy of
10:47:26 21 the plea agreement there in front of you?

10:47:30 22 THE DEFENDANT: Yes.

10:47:30 23 THE COURT: Why don't you turn to paragraph
10:47:32 24 four of the plea agreement? All right. I'll walk
10:47:45 25 through this with you, but could you tell me, first of

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10:47:47 2 all, in your own words, what did you do that is causing
10:47:51 3 you to plead guilty?

10:47:51 4 THE DEFENDANT: I agreed, with others, to
10:47:53 5 submit to ESL Federal Credit Union, documents that
10:47:56 6 contained inaccurate construction contract price
10:48:00 7 information for Ellison Heights project in order to get
10:48:05 8 excess loan funds and evade the equity requirements of
10:48:09 9 the construction loan.

10:48:09 10 THE COURT: Okay. And did this occur in or
10:48:13 11 around September of 2016 in the Western District of New
10:48:18 12 York?

10:48:18 13 THE DEFENDANT: Yes, your Honor.

10:48:20 14 THE COURT: And do you agree that you agreed
10:48:22 15 with others to obtain money or property by means of
10:48:26 16 inaccurate representations transmitted by wire in
10:48:30 17 violation of Title 18 U.S.C. Section 371?

10:48:33 18 THE DEFENDANT: Yes.

10:48:35 19 THE COURT: Now, paragraph 4(b0 describes
10:48:38 20 Ellison Heights Apartments, LLC as a Limited Liability
10:48:45 21 Company and describes why it was formed. Is that
10:48:50 22 description accurate?

10:48:51 23 THE DEFENDANT: Yes, your Honor.

10:48:51 24 THE COURT: And you were the manager of
10:48:53 25 Morgan Ellison Heights, LLC as well as the -- well, let

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10:48:58 2 me rephrase that. You were the manager of Morgan
10:49:02 3 Ellison Heights, LLC, which was the majority owner of
10:49:06 4 Ellison Heights Apartments, LLC. Is that correct?
10:49:08 5 THE DEFENDANT: That's correct, your Honor.
10:49:19 6 THE COURT: Do you agree with paragraph
10:49:22 7 4 (b) (iv), which says that you saw and were aware of
10:49:25 8 documents reflecting inaccurate information and agreed
10:49:29 9 along with one or more co-conspirators for that
10:49:33 10 information to be submitted to ESL to receive more funds
10:49:37 11 from the loan?

10:49:38 12 THE DEFENDANT: Yes, your Honor.

10:49:39 13 THE COURT: And do you agree that the
10:49:41 14 transmission via wire of this inaccurate information to
10:49:44 15 ESL to obtain the construction loan was an overt act
10:49:49 16 committed to obtain a larger amount of the construction
10:49:51 17 loan than what would have otherwise been supported by
10:49:54 18 the actual figures. Is that true?

10:49:56 19 THE DEFENDANT: Yes, your Honor.

10:50:01 20 THE COURT: And do you agree that the facts
10:50:02 21 that we've just gone over and that what you just
10:50:06 22 testified to and answered my questions about, that the
10:50:10 23 government would be able to prove those facts beyond a
10:50:13 24 reasonable doubt at trial or another hearing?

10:50:15 25 THE DEFENDANT: Yes, your Honor.

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10:50:16 2 THE COURT: All right. Let me ask the
10:50:19 3 government, first of all. Anything else that you think
10:50:21 4 I should cover?

10:50:22 5 MR. GLABERSON: No, your Honor.

10:50:23 6 THE COURT: Mr. Cohen?

10:50:23 7 MR. COHEN: No, your Honor.

10:50:24 8 THE COURT: All right. Mr. Morgan, I do
10:50:27 9 find, based on your answers to my questions, that there
10:50:29 10 is a sufficient factual basis for your plea, and,
10:50:32 11 therefore, I will accept it. I'm going to defer on
10:50:35 12 whether or not I accept the plea agreement. But I will
10:50:37 13 accept your plea.

10:50:39 14 So I now am going to ask you, in the
10:50:41 15 presence of your attorneys, how do you plead to the one
10:50:44 16 count Superseding Information charging a violation of
10:50:48 17 Title 18 U.S.C. Section 371?

10:50:54 18 THE DEFENDANT: Guilty.

10:50:54 19 THE COURT: Okay. Thank you. We discussed
10:50:58 20 sentencing dates last week. I think Todd Morgan's
10:51:01 21 sentencing was scheduled for here in Rochester on July
10:51:06 22 21st, maybe, it was a Friday?

10:51:11 23 MR. COHEN: July 22nd.

10:51:12 24 THE COURT: How does that work for counsel
10:51:16 25 and Mr. Robert Morgan?

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10:51:20 2 MR. COHEN: That would work for us, your
10:51:23 3 Honor.

10:51:23 4 THE COURT: Okay. What about 9:30 that
10:51:33 5 morning?

10:51:34 6 MR. COHEN: That's fine, your Honor.

10:51:35 7 THE COURT: Does that work for the
10:51:36 8 government?

10:51:37 9 MR. GLABERSON: Yes, your Honor.

10:51:38 10 THE COURT: We'll schedule Mr. Morgan's
10:51:40 11 sentencing at 9:30 on Friday July 22nd. Are the parties
10:51:45 12 anticipating, I mean, it's going to depend on what the
10:51:48 13 PSR says, but are you anticipating anything being
10:51:52 14 submitted for me to resolve potential disagreement about
10:51:56 15 the offense level, other than written submissions? I
10:52:01 16 mean, in other words, is anybody anticipating that we
10:52:04 17 would have to have an evidentiary hearing to resolve
10:52:06 18 those issues? I mean, because the offense levels is
10:52:12 19 pretty wide disagreement. In the end, it may not impact
10:52:17 20 anything if I accept the 11(c)(1)(C), but --

10:52:22 21 MR. GLABERSON: As your Honor said, I guess
10:52:23 22 it does depend on what the PSR does say. Certainly, the
10:52:28 23 government did not anticipate holding an evidentiary
10:52:31 24 hearing on the issues.

10:52:32 25 THE COURT: What about Mr. Cohen, from the

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10:52:33 2 defense perspective?

10:52:34 3 MR. COHEN: Same general answer, your Honor.

10:52:37 4 Depends on what the report says or what the government

10:52:39 5 does, but we don't have an independent plan to present

10:52:43 6 anything on those issues.

10:52:44 7 THE COURT: What I will do is issue my

10:52:46 8 typical sentencing scheduling order that will set forth

10:52:49 9 the deadlines for various submissions in advance of the

10:52:52 10 sentencing. But if upon seeing the initial draft of the

10:52:55 11 PSR, you believe that there is going to be a need for

10:53:01 12 further discussion, at least, with the Court, let me

10:53:04 13 know and we can have that discussion. Okay?

10:53:07 14 MR. GLABERSON: Yes, your Honor.

10:53:08 15 MR. COHEN: Yes.

10:53:08 16 THE COURT: Anything else on behalf of Mr.

10:53:11 17 Morgan?

10:53:11 18 MR. COHEN: No, your Honor.

10:53:12 19 THE COURT: Anything else on behalf of the

10:53:14 20 government?

10:53:14 21 MR. GLABERSON: No, your Honor.

10:53:14 22 THE COURT: All right. Thank you,

10:53:16 23 everybody. Have a good day.

10:53:17 24 MR. GLABERSON: Thank you.

10:53:19 25 THE DEFENDANT: Thank you.

10:53:19

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4 CERTIFICATE OF REPORTER

5
6 I certify that the foregoing is a correct transcript
7 of the record of proceedings in the above-entitled
8 matter.

9
10 S/ Karen J. Clark, RPR

11 Official Court Reporter

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